

## **REMARKS**

Applicants have now had an opportunity to carefully consider the Examiner's comments set forth in the Office Action of August 31, 2011. Claims 18-22 have been canceled without prejudice or disclaimer of the subject matter contained therein. Claims 1-5, 7-17 and 23 remain in the application. Reconsideration and/or reexamination of the application is hereby respectfully requested by the applicant.

### **I. The Office Action**

Claims 1, 2, 4, 5, 7, 10-15 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pub. No. 2004/0180689 to Nayak in view of U.S. Pub. No. 2005/0088513 to Oswald, et al. ("Oswald") in view of U.S. Pub. No. 2002/0132608 to Shinohara, in view of U.S. Pub. No. 2003/0045273 to Pyhalammi, et al. ("Pyhalammi") and in further view of U.S. Pub. No. 2004/0103434 to Ellis.

Claims 18, 20 and 23 were rejected under 35 USC § 103(a) as being unpatentable over Nayak in view of Shinohara and Pyhalammi and in further view of U.S. Patent Publication No. 2003/0105825 to Kring, et al. ("Kring").

Claim 3 was rejected under 35 USC § 103(a) as being unpatentable over Nayak in view of Shinohara and Pyhalammi and further in view of U.S. Patent Publication No. 2004/0207719 to Tervo, et al. ("Tervo").

Claims 8 and 16 were rejected under 35 USC § 103(a) as being unpatentable over Nayak in view of Shinohara and Pyhalammi and further in view of U.S. Patent Publication No. 2001/0044325 to Cox, et al. ("Cox").

Claim 21 was rejected under 35 USC § 103(a) as being unpatentable over Nayak in view of Shinohara, Pyhalammi and Kring and further in view of Cox.

Claims 9 and 17 were rejected under 35 USC § 103(a) as being unpatentable over Nayak in view of Shinohara and Pyhalammi and further in view of U.S. Patent No. 7,289,792 to Turunen.

Claim 22 was rejected under 35 USC § 103(a) as being unpatentable over Nayak in view of Shinohara, Pyhalammi and Kring and further in view of Turunen.

## **II. The Rejections of Claims 18-22**

The rejections of claims 18-22 are now moot insomuch as these claims have been canceled without prejudice or disclaimer of the subject matter contained therein.

## **III. The Rejection of Claim 23**

The rejection of claim 23 is traversed. Notably, the rejection of claim 1 relies on Oswald (as per paragraph 2 on page 2 of the outstanding Office Action). However, the rejection of claim 23 does **NOT** rely on Oswald (as per paragraph 3 on page 9 of the outstanding Office Action). Yet, claim 23 depends from claim 1. Because dependent claims are deemed to include all the features of any claims from which they depend, it is well-accepted practice that a proper rejection of a dependent claim must rely on at least the same references as used to reject the independent claim from which the dependent claim depends. Accordingly, the rejection of claim 23 is erroneous and should be withdrawn.

## **IV. The Rejection of Claim 3**

The rejection of claim 3 is traversed. Notably, the rejection of claim 1 relies on Oswald (as per paragraph 2 on page 2 of the outstanding Office Action). However, the rejection of claim 3 does **NOT** rely on Oswald (as per paragraph 4 on page 12 of the outstanding Office Action). Yet, claim 3 depends from claim 1. Because dependent claims are deemed to include all the features of any claims from which they depend, it is well-accepted practice that a proper rejection of a dependent claim must rely on at least the same references as used to reject the independent claim from which the dependent claim depends. Accordingly, the rejection of claim 3 is erroneous and should be withdrawn.

## **V. The Rejection of Claims 8 and 16**

The rejection of claims 8 and 16 is traversed. Notably, the rejection of claims 1 and 10 relies on Oswald (as per paragraph 2 on page 2 of the outstanding Office Action). However, the rejection of claims 8 and 16 does **NOT** rely on Oswald (as per

paragraph 5 on page 13 of the outstanding Office Action). Yet, claims 8 and 16 depend from claims 1 and 10 respectively. Because dependent claims are deemed to include all the features of any claims from which they depend, it is well-accepted practice that a proper rejection of a dependent claim must rely on at least the same references as used to reject the independent claim from which the dependent claim depends. Accordingly, the rejection of claims 8 and 16 is erroneous and should be withdrawn.

#### **VI. The Rejection of Claims 9 and 17**

The rejection of claims 9 and 17 is traversed. Notably, the rejection of claims 1 and 10 relies on Oswald (as per paragraph 2 on page 2 of the outstanding Office Action). However, the rejection of claims 9 and 17 does **NOT** rely on Oswald (as per paragraph 7 on page 15 of the outstanding Office Action). Yet, claims 9 and 17 depend from claims 1 and 10 respectively. Because dependent claims are deemed to include all the features of any claims from which they depend, it is well-accepted practice that a proper rejection of a dependent claim must rely on at least the same references as used to reject the independent claim from which the dependent claim depends. Accordingly, the rejection of claims 8 and 16 is erroneous and should be withdrawn.

#### **VII. The Rejection of Claims 1 and 10**

The rejection of claims 1 and 10 is traversed.

Notably, in contrast to previous allegations, it has now been conceded that Nayak fails to teach recognizing a call from the first mobile station as including video data. Presumably, the present Office Action attempts to remedy this short fall with the addition of Oswald. The Office Action fails to provide any explanation as to how Oswald is being applied.

In any event, arguably Oswald teaches detecting an incoming call (see, e.g., box 204 of FIG. 2) and determining if it is a video telephony call (see, e.g., box 206 of FIG. 2). Notably, however, these steps are carried out by the wireless portable communication device 104 receiving the incoming call (see, e.g., paragraph [0009] of Oswald). This is contrary to the express language of the claims. In particular, claim 1 recites that a mobile switching center includes the call recognition module and claim 10

recites that recognizing the call as including video data is executed within a mobile switching center. In this regard, Oswald teaches away from having a call recognition module and/or performing the claimed recognizing step in a mobile switching center, insomuch as Oswald teaches this function as being carried out by the wireless portable device receiving the call.

For at least the foregoing reason, it is respectfully submitted that claims 1 and 10 distinguish patentably over the combination of Nayak, Oswald, Shinohara, Pyhalammi and Ellis, along with claims 2-5, 7-9, 11-17 and 23 which depend respectively from claims 1 and 10.

### CONCLUSION

For the reasons detailed above, it is respectfully submitted all claims remaining in the application (Claims 1-5, 7-17 and 23) are now in condition for allowance. The foregoing comments do not require unnecessary additional search or examination.

☒ Remaining Claims, as delineated below:

(1) FOR	(2) CLAIMS REMAINING AFTER AMENDMENT LESS HIGHEST NUMBER PREVIOUSLY PAID FOR		(3) NUMBER EXTRA
TOTAL CLAIMS	17	- 20 =	0
INDEPENDENT CLAIMS	2	- 3 =	0

☒ This is an authorization under 37 CFR 1.136(a)(3) to treat any concurrent or future reply, requiring a petition for extension of time, as incorporating a petition for the appropriate extension of time.

☒ The Commissioner is hereby authorized to charge any filing or prosecution fees which may be required, under 37 CFR 1.16, 1.17, and 1.21 (but not 1.18), or to credit any overpayment, to Deposit Account Number 06-0308.

In the event the Examiner considers personal contact advantageous to the disposition of this case, he/she is hereby authorized to telephone the undersigned, at 216.363.9000.

Respectfully submitted,

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May 18, 2012  
Date

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